JUDGMENT—ENJOINING EXECUTION ON DORMANT JUDGMENT.—Plaintiffs herein were defendants in a suit instituted by one H. to foreclose a mortgage; H. obtained judgment, but the sale of the mortgaged property failed to satisfy the debt in toto. Subsequently by the death of H., the judgment in the foreclosure proceeding became dormant, but an execution was sued out on that judgment. Plaintiff now seeks to enjoin the execution. *Held,* that an execution issued upon a dormant judgment is void and may be enjoined. *Updegraff et al.* v. *Lucas, sheriff et al.* (1907), — Kan. —, 93 Pac. Rep. 630.

At common law a plaintiff who obtained a judgment in a personal action was compelled to attempt to execute it within a year and a day, but by the statute of Westminster II, scire facias was given to revive the judgment. Unless the judgment was revived execution could not issue. In many states after the time of the statute has run, execution can issue only by an order of court granted on proof that the judgment remains unsatisfied. FREEMAN, EXECUTIONS (3rd ed.), §§ 27, 27a. While it is true that an execution on a dormant judgment is subject to attack in some manner, still the courts differ as to the method which should be pursued. Thus it has been held that the remedy is by motion in the original cause and not by injunction. *Mayo* v. *Bryte,* 47 Cal. 626; *Walker* v. *Gurley,* 83 N. C. 429. On the other hand it has been held that an injunction is the proper remedy. *Krinke* v. *Parish,* 9 Ohio Cir. Ct. 141 (citing *Miller* v. *Longacre,* 26 Oh. St. 291); *North* v. *Swing,* 24 Tex. 193; *Seymour* v. *Hill,* 67 Tex. 385, 3 S. W. 313; *Gabel* v. *McMahan,* 1 Tex. App. Civ. Cas. 716. In *Seymour* v. *Hill* (supra), it was said that the reason the injunction would issue is that when the judgment becomes dormant, it is presumed that it is satisfied, but that this presumption is rebuttable by proof that it has not in fact been paid, and when such proof is produced, the injunction will be dissolved. In California it is held that the special circumstances of the individual case control. *Imlay* v. *Carpentier,* 14 Cal. 173; *City and County of San Francisco* v. *Pixley,* 21 Cal. 56.

MASTER AND SERVANT—LIABILITY OF MASTER TO SERVANT FOR INJURY DUE TO DEFECTIVE MACHINERY—CONSTRUCTIVE NOTICE OF DEFECTS.—Plaintiff was employed at a machine for cutting tissue paper, in which knives descended when a lever was pressed. When the machine was working properly it was impossible for the knives to descend more than once as a result of a single pressing of the lever. After one operation of the knives, plaintiff reached under to remove the cut paper and the knives descended without his having pressed the lever a second time, and he was injured. There was evidence that it was impossible to discover any defect by inspection. Further evidence showed that several times before this the machine had acted in a similar manner and this fact was well known among the workmen. *Held,* that such a reputation for defective operation was sufficient to charge defendant with notice of the dangerous condition of the machine. *Fleming* v. *Northern Tissue Paper Mill* (1908), — Wis. —, 114 N. W. Rep. 841.

In holding that several instances of defective operation of a piece of machinery, extending over a considerable period of time, may create among the workmen such a reputation for defective operation as will charge a defendant